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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,721	12/28/2001	Huijuan D. Chen	83710D-W	2122

7590

11/03/2003

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EXAMINER

KLEMANSKI, HELENE G

ART UNIT PAPER NUMBER

1755

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

eb7

Office Action Summary

Application No.

10/034,721

Applicant(s)

CHEN ET AL.

Examiner

Helene Klemanski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. The objection to the disclosure as set forth in the previous Office Action dated June 20, 2003 has been overcome and is now withdrawn.
2. The objection to the specification as set forth in the previous Office Action dated June 20, 2003 has been overcome and is now withdrawn.
3. Applicant's arguments are persuasive to the extent that the 102 (b) and (e) rejections as set forth in the previous Office Action dated June 20, 2003 are withdrawn.

Claim Objections

4. Claims 7-9 are objected to because of the following informalities: in claim 7, line 1, the phrase "**COLOR INDEX**" should be replaced with the phrase "Color Index"; in claim 8, line 2, the phrase "**COLOR INDEX**" should be replaced with the phrase "Color Index" and in claim 9, line 2, the phrase "**COLOR INDEX**" should be replaced with the phrase "Color Index". Appropriate correction is required.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,598,967. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application overlap said patent claims and would be obvious thereby.

Applicants should note that U.S. Serial No. 10/034281 has now matured into the above U.S. Patent and the obviousness-type double patenting rejection is no longer provisional.

Claims 1-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 10/032931. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application overlap said patent claims and would be obvious thereby.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Applicants should note that this application has been allowed and will issue as U.S. Patent No. 6,644,799 on November 11, 2003.

Claims 1-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20 of copending

Application No. 10/034285. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application overlap said patent claims and would be obvious thereby.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/033229. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application overlap said patent claims and would be obvious thereby.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

6. Applicants have not filed terminal disclaimers to obviate the above obviousness type double patenting rejections, therefore they are being maintained. The Examiner acknowledges that applicants are willing to file the terminal disclaimers and will consider them when they are filed. Accordingly, this action is final.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helene Klemanski whose telephone number is 703-308-3745. The examiner can normally be reached on Monday-Friday 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 703-308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

After the move to the new USPTO Headquarters in Alexandria, Virginia, tentatively scheduled for the week of December 22, 2003, the Examiner's new phone number will be (571) 272-1370 and Mr. Bell's new phone number will be (571) 272-1362.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Helene Klemanski
Primary Examiner
Art Unit 1755



HK
November 3, 2003